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UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

REGAN SMITH, individually and on behalf of
all others similarly situated

Plaintiff,

v.

AFFORDABLE AUTOMOTIVE SOLUTION,
an unknown business entity, SUNPATH
LIMITED, a Delaware corporation,
NORTHCOAST WARRANTY SERVICES,
INC., a Delaware corporation,
Defendants.

Case No.: 8:19-cv-00259

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff REGAN SMITH (“Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant AFFORDABLE AUTOMOTIVE SOLUTION, Defendant SUNPATH LIMITED CORP. and Defendant NORTHCOAST WARRANTY SERVICES, INC., (together, “Defendants”) to stop their illegal practice of making unauthorized calls that play prerecorded voice messages to the cellular telephones of consumers nationwide, and to obtain redress for all persons injured by their conduct. Plaintiff alleges as follows upon personal knowledge as to herself and her own

1 acts and experiences, and, as to all other matters, upon information and belief, including investigation
2 conducted by her attorney.

3 4 NATURE OF THE ACTION

5 2. In the course of selling their services, Defendants and/or their agents placed thousands of
6 automated calls employing a prerecorded voice message to consumers' cell phones nationwide.

7 3. Unfortunately, Defendants did not obtain consent prior to placing these calls and,
8 therefore, are in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

9 4. Congress enacted the TCPA in 1991 to restrict the use of sophisticated telemarketing
10 equipment that could target millions of consumers *en masse*. Congress found that these calls were not
11 only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate
12 commerce generally. *See* S. Rep. No. 102-178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968,
1969-71.

13 5. The TCPA targets unauthorized calls exactly like the ones alleged in this case, based on
14 Defendants' use of technological equipment to spam consumers with its advertising on a grand scale.

15 6. By placing the calls at issue, Defendants have violated the statutory rights of Plaintiff and
16 the Class.

17 7. Plaintiff therefore seeks an injunction requiring Defendants to stop its unconsented
18 calling, as well as an award of actual and statutory fines to the Class members, together with costs and
19 reasonable attorneys' fees.

20 PARTIES

21 8. Plaintiff REGAN SMITH is a natural person and is a citizen of the District of Nebraska.

22 9. Defendant AFFORDABLE AUTOMOTIVE SOLUTION ("Defendant Affordable") is an
23 unknown business entity doing business at 773 South Kirkman Rd #102, Orlando, Orange County,
24 Florida 32811.

25 10. Defendant SUNPATH LIMITED (Defendant "Sunpath") is a corporation organized and
26 existing under the laws of the State of Delaware with its principal place of business at 50 Braintree Hill
27 Park Ste 310, Braintree, Massachusetts 02184-8704
28

11. Defendant NORTHCOAST WARRANTY SERVICES, INC. (Defendant “Northcoast”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 800 Superior Avenue East, 21st Floor, Cleveland, Ohio 44114.

JURISDICTION AND VENUE

12. This Court has federal subject matter jurisdiction under 28 U.S.C. §1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227, which is a federal statute.

13. This Court has personal jurisdiction over Defendants because they placed phone calls into this District and in the State of Nebraska and because the events giving rise to this lawsuit occurred in this District.

14. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because Defendants regularly conduct business in the State of Nebraska and in this District, and because the wrongful conduct giving rise to this case occurred in this District.

COMMON FACTUAL ALLEGATIONS

15. Defendants are companies that sell auto protection plans.

16. To increase the reach of their efforts, Defendants and/or their authorized sales agents repeatedly called and sent prerecorded voice messages to thousands or possibly tens of thousands of cell phones at a time.

17. When the Class members answered their cell phones or listened to their messages expecting to hear from a real person, Defendants pulled a bait and switch by playing a prerecorded voice message.

18. Unfortunately, Defendants failed to obtain consent from Plaintiff and the Class before bombarding their cell phones with these illegal voice recordings.

FACTS SPECIFIC TO PLAINTIFF REGAN SMITH

19. On April 5, 2019 at 11:24 a.m., Plaintiff received a call on Plaintiff's cell phone.

1 successors, predecessors, and any entity in which the Defendants or their parents have a controlling
2 interest and its current or former employees, officers and directors; (3) persons who properly execute
3 and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have
4 been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants'
5 counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

6 31. **Numerosity:** The exact number of the Class members is unknown and not available to
7 Plaintiff, but it is clear that individual joinder is impracticable. On information and belief, Defendants
8 placed telephone calls to thousands of consumers who fall into the definition of the Class. Members of
9 the Class can be identified through Defendants' records.

10 32. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class, in
11 that Plaintiff and the Class members sustained damages arising out of Defendants' uniform wrongful
12 conduct and unsolicited telephone calls.

13 33. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the
14 interests of the other members of the Class. Plaintiff's claims are made in a representative capacity on
15 behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the
16 other members of the proposed Class and is subject to no unique defenses. Plaintiff has retained
17 competent counsel to prosecute the case on behalf of Plaintiff and the proposed Class. Plaintiff and her
18 counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and
19 have the financial resources to do so.

20 34. **Policies Generally Applicable to the Class:** This class action is appropriate for
21 certification because Defendants have acted or refused to act on grounds generally applicable to the
22 Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible
23 standards of conduct toward the Class members and making final injunctive relief appropriate with
24 respect to the Class as a whole. Defendants' practices challenged herein apply to and affect the Class
25 members uniformly, and Plaintiff's challenge of those practices hinge on Defendants' conduct with
26 respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

27 35. **Commonality and Predominance:** There are many questions of law and fact common to
28 the claims of Plaintiff and the Class, and those questions predominate over any questions that may
affect individual members of the Class. Common questions for the Class include, but are not
necessarily limited to the following:

- i. Whether Defendants' conduct violated the TCPA;

- 1 ii. Whether Defendants' conduct violated the TCPA *willingly* and/or *knowingly*;
- 2 iii. Whether Defendants called and played its voice recordings to thousands of cell phones;
- 3 iv. Whether Defendants obtained prior written consent prior to contacting any members of
- 4 the Class;
- 5 v. Whether members of the Class are entitled to treble damages based on the knowingness
- 6 or willfulness of Defendants' conduct.

7 36. **Superiority:** Plaintiff's case is also appropriate for class certification because class
 8 proceedings are superior to all other available methods for the fair and efficient adjudication of
 9 plaintiff's controversy as joinder of all parties is impracticable. The damages suffered by the individual
 10 members of the Class will likely be relatively small, especially given the burden and expense of
 11 individual prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be
 12 virtually impossible for the individual members of the Class to obtain effective relief from Defendants'
 13 misconduct. Even if members of the Class could sustain such individual litigation, it would still not be
 14 preferable to a class action, because individual litigation would increase the delay and expense to all
 15 parties due to the complex legal and factual controversies presented in Plaintiff's Complaint. By
 16 contrast, a class action presents far fewer management difficulties and provides the benefits of single
 17 adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time,
 18 effort and expense will be fostered, and uniformity of decisions ensured.

19 **CAUSE OF ACTION**

20 **Violation of 47 U.S.C. § 227**

21 **(On behalf of Plaintiff and the Class)**

22 37. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

23 38. Defendants and/or its agent placed telephone calls to Plaintiff's and the Class members'
 24 cellular telephones without having their prior express written consent to do so.

25 39. Defendants' calls were made for a commercial purpose.

26 40. Defendants played a prerecorded voice message to the cell phones of Plaintiff and the
 27 Class members as proscribed by 47 U.S.C. § 227(b)(1)(A)(iii).

28 41. As a result of its unlawful conduct, Defendants repeatedly invaded Plaintiff's and the
 Class's personal privacy, causing them to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling

1 them to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop
2 their illegal calling campaign.

3 42. Defendants and/or its agent made the violating calls “*willfully*” and/or “*knowingly*” under
4 47 U.S.C. § 227(b)(3)(C).

5 43. If the court finds that Defendants *willfully* and/or *knowingly* violated this subsection, the
6 court may increase the civil fine from \$500 to \$1500 per violation under 47 U.S.C. § 227(b)(3)(C).

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff REGAN SMITH, individually and on behalf of the Class, prays for the
9 following relief:
10

- 11 A. An order certifying the Class as defined above, appointing Plaintiff REGAN SMITH as
12 the Class representative and appointing her counsel as Class Counsel;
13 B. An order declaring that Defendants’ actions, as set out above, violate the TCPA;
14 C. An order declaring that Defendants’ actions, as set out above, violate the TCPA *willfully*
15 and *knowingly*;
16 D. An injunction requiring Defendants to cease all unlawful calls without first obtaining the
17 call recipients’ prior express written consent to receive such calls, and otherwise
18 protecting interests of the Class;
19 E. An award of actual damages and/or statutory fines and penalties;
20 F. An award of reasonable attorneys’ fees and costs; and
21 G. Such other and further relief that the Court deems reasonable and just.

22 **JURY DEMAND**

23 Plaintiff requests a trial by jury of all claims that can be so tried.

24 Dated: June 14, 2019

25 Respectfully submitted,
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1 REGAN SMITH, individually and on
2 behalf of all others similarly situated,

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4 By: /s/ Mark L. Javitch.
Plaintiff's Attorney

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